

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	79152856
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 107
<b>MARK SECTION</b>	
<b>MARK</b>	<a href="http://tmng-al.uspto.gov/resting2/api/img/79152856/large">http://tmng-al.uspto.gov/resting2/api/img/79152856/large</a>
<b>LITERAL ELEMENT</b>	GANTNER
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>ARGUMENT(S)</b>	
<p>In the final action, the examining attorney maintained refusal to register the applicant's mark under Trademark Act §2(e)(4), 15 U.S.C. §1052(e)(4), because, in her opinion, the applicant's mark is primarily merely a surname. The applicant respectfully submits that the applicant's mark is entitled to registration because the mark has become distinctive of the goods and services identified in the application through the applicant's substantially exclusive and continuous use of the mark in commerce for at least five years immediately before the date on which the claim of distinctiveness is made. Trademark Act §2(f), 15 U.S.C. §1052(f); TMEP §1212.05. To support this claim of five years of use, the applicant submits a declaration under 37 C.F.R. §2.20, signed by the applicant. The applicant believes that this declaration is sufficient to establish acquired distinctiveness of the mark. TMEP §1212.05(d).</p> <p>In order to fully satisfy requirements for acquired distinctiveness, the applicant submits additional evidence that the subject mark has acquired distinctiveness for the identified goods and services.</p> <p>(1) Advertising and promotional materials</p> <p>The applicant has attended tradeshows organized by a trade association of health and sports clubs, promoting and advertising its automated access control and check-in systems, electronic locking systems and cashless payment systems, in the US every year since 2012. The applicant submits photographs of the applicant's booths and advertisements from the tradeshows. The applicant's attendance at the tradeshow has exposed the applicant's mark to potential customers over the years, and the mark has served as a source identifier of the applicant's goods and services.</p> <p>(2) Dollar figures for sales in the US under the mark:</p>	

2005: \$18,900; 2006: \$1,185; 2007: \$14,830; 2008: \$3,800; 2010: \$1,200; 2011: \$19,600; 2012: \$29,800; 2013: \$97,000; 2014: \$75,000.

The evidence submitted together with this response is sufficient to establish that the applicant's mark has acquired secondary meaning.

In the foregoing paragraphs, the applicant has demonstrated that the mark has acquired distinctiveness under 15 U.S.C. §1052(f), and is therefore entitled to registration. The applicant respectfully requests that the examining attorney withdraw her refusal to register under Trademark Act §2(e) (4), 15 U.S.C. §1052(e) (4), and approve the subject mark for publication.

## EVIDENCE SECTION

### EVIDENCE FILE NAME(S)

JPG FILE(S)	<a href="\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0003.JPG">\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0003.JPG</a>
	<a href="\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0004.JPG">\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0004.JPG</a>
	<a href="\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0005.JPG">\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0005.JPG</a>
	<a href="\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0006.JPG">\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0006.JPG</a>
	<a href="\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0007.JPG">\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0007.JPG</a>
	<a href="\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0008.JPG">\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0008.JPG</a>
ORIGINAL PDF FILE	<a href="#">evi_173166180145-20151113172724626855_2_f_declaration_executed_.pdf</a>
CONVERTED PDF FILE(S) (1 page)	<a href="\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0002.JPG">\\TICRS\EXPORT16\IMAGEOUT16\791\528\79152856\xml13\RFR0002.JPG</a>
DESCRIPTION OF EVIDENCE FILE	the declaration under 37 C.F.R. §2.20 executed by the applicant, photographs of the applicant's booths and advertisements from the tradeshow

## ADDITIONAL STATEMENTS SECTION

SECTION 2(f) Claim of Acquired Distinctiveness, based on Five or More Years' Use	The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use of the mark in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.
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## SIGNATURE SECTION

DECLARATION SIGNATURE	/aoi nawashiro/
SIGNATORY'S NAME	aoi nawashiro
SIGNATORY'S POSITION	attorney for applicant, District of Columbia bar
SIGNATORY'S PHONE NUMBER	2026285197

<b>DATE SIGNED</b>	11/13/2015
<b>RESPONSE SIGNATURE</b>	/aoi nawashiro/
<b>SIGNATORY'S NAME</b>	aoi nawashiro
<b>SIGNATORY'S POSITION</b>	attorney for applicant, District of Columbia bar
<b>SIGNATORY'S PHONE NUMBER</b>	2026285197
<b>DATE SIGNED</b>	11/13/2015
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	NO
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Fri Nov 13 17:38:39 EST 2015
<b>TEAS STAMP</b>	USPTO/RFR-173.166.180.145 -20151113173839424761-791 52856-54099b942f688881324 49e105faa29362dec27b8a15f 2ba9dd91fc98fd515a407-N/A -N/A-20151113172724626855

## Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **79152856** GANTNER(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/79152856/large>) has been amended as follows:

### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

In the final action, the examining attorney maintained refusal to register the applicant's mark under Trademark Act §2(e)(4), 15 U.S.C. §1052(e)(4), because, in her opinion, the applicant's mark is primarily merely a surname. The applicant respectfully submits that the applicant's mark is entitled to registration because the mark has become distinctive of the goods and services identified in the application through the applicant's substantially exclusive and continuous use of the mark in commerce for at least five years immediately before the date on which the claim of distinctiveness is made. Trademark Act §2(f), 15 U.S.C.

§1052(f); TMEP §1212.05. To support this claim of five years of use, the applicant submits a declaration under 37 C.F.R. §2.20, signed by the applicant. The applicant believes that this declaration is sufficient to establish acquired distinctiveness of the mark. TMEP §1212.05(d).

In order to fully satisfy requirements for acquired distinctiveness, the applicant submits additional evidence that the subject mark has acquired distinctiveness for the identified goods and services.

(1) Advertising and promotional materials

The applicant has attended tradeshows organized by a trade association of health and sports clubs, promoting and advertising its automated access control and check-in systems, electronic locking systems and cashless payment systems, in the US every year since 2012. The applicant submits photographs of the applicant's booths and advertisements from the tradeshows. The applicant's attendance at the tradeshow has exposed the applicant's mark to potential customers over the years, and the mark has served as a source identifier of the applicant's goods and services.

(2) Dollar figures for sales in the US under the mark:

2005: \$18,900; 2006: \$1,185; 2007: \$14,830; 2008: \$3,800; 2010: \$1,200; 2011: \$19,600; 2012: \$29,800; 2013: \$97,000; 2014: \$75,000.

The evidence submitted together with this response is sufficient to establish that the applicant's mark has acquired secondary meaning.

In the foregoing paragraphs, the applicant has demonstrated that the mark has acquired distinctiveness under 15 U.S.C. §1052(f), and is therefore entitled to registration. The applicant respectfully requests that the examining attorney withdraw her refusal to register under Trademark Act §2(e) (4), 15 U.S.C. §1052(e) (4), and approve the subject mark for publication.

## **EVIDENCE**

Evidence in the nature of the declaration under 37 C.F.R. §2.20 executed by the applicant, photographs of the applicant's booths and advertisements from the tradeshows has been attached.

**JPG file(s):**

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

**Original PDF file:**

[evi\\_173166180145-20151113172724626855 . 2 f declaration executed .pdf](#)

**Converted PDF file(s) ( 1 page)**

[Evidence-1](#)

## **ADDITIONAL STATEMENTS**

### **SECTION 2(f) Claim of Acquired Distinctiveness, based on Five or More Years' Use**

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use of the mark in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

**SIGNATURE(S)**  
**Declaration Signature**

**DECLARATION:** The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that, if the applicant submitted the application or allegation of use (AOU) unsigned, all statements in the application or AOU and this submission based on the signatory's own knowledge are true, and all statements in the application or AOU and this submission made on information and belief are believed to be true.

**STATEMENTS FOR UNSIGNED SECTION 1(a) APPLICATION/AOU:** If the applicant filed an unsigned application under 15 U.S.C. §1051(a) or AOU under 15 U.S.C. §1051(c), the signatory additionally believes that: the applicant is the owner of the mark sought to be registered; the mark is in use in commerce and was in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; the original specimen(s), if applicable, shows the mark in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; *for a collective trademark, collective service mark, collective membership mark application, or certification mark application*, the applicant is exercising legitimate control over the use of the mark in commerce and was exercising legitimate control over the use of the mark in commerce as of the filing date of the application or AOU; *for a certification mark application*, the applicant is not engaged in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

**STATEMENTS FOR UNSIGNED SECTION 1(b)/SECTION 44 APPLICATION AND FOR SECTION 66(a) COLLECTIVE/CERTIFICATION MARK APPLICATION:** If the applicant filed an unsigned application under 15 U.S.C. §§ 1051(b), 1126(d), and/or 1126(e), or filed a collective/certification mark application under 15 U.S.C. §1141f(a), the signatory additionally believes that: *for a trademark or service mark application*, the applicant is entitled to use the mark in commerce on or in connection with the goods/services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date; *for a collective trademark, collective service mark, collective membership mark, or certification mark application*, the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date; the signatory is properly authorized to execute the declaration on behalf of the applicant; *for a certification mark application*, the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such**

**near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

Signature: /aoi nawashiro/ Date: 11/13/2015

Signatory's Name: aoi nawashiro

Signatory's Position: attorney for applicant, District of Columbia bar

Signatory's Phone Number: 2026285197

**Request for Reconsideration Signature**

Signature: /aoi nawashiro/ Date: 11/13/2015

Signatory's Name: aoi nawashiro

Signatory's Position: attorney for applicant, District of Columbia bar

Signatory's Phone Number: 2026285197

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 79152856

Internet Transmission Date: Fri Nov 13 17:38:39 EST 2015

TEAS Stamp: USPTO/RFR-173.166.180.145-20151113173839

424761-79152856-54099b942f68888132449e10

5faa29362dec27b8a15f2ba9dd91fc98fd515a40

7-N/A-N/A-20151113172724626855

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	ATTY'S DKT: GANTNER=1
Gantner Electronic GmbH	)	
	)	Law Office: 107
Appln. No.: 79/152856	)	Examiner: Y. I. Lee
Filed: June 4, 2014	)	
Mark: GANTNER	)	

**DECLARATION UNDER 37 CFR §2.20**

I, Elmar Hartmann, hereby declare:

- (1) I am Managing Director of the applicant of the above-referenced trademark application, and am authorized to execute this declaration on behalf of the owner of the mark in the subject application;
- (2) I hereby confirm and ratify all statements made by myself in the subject application;
- (3) I confirm that the mark has been used for the goods and services identified in the subject application in the United States since at least as early as December 2005. I further confirm that the mark has become distinctive of the goods and services identified in the subject application through the substantially exclusive and continuous use in commerce in the United States for at least five years immediately before the date of this statement by the applicant or its predecessors in interest.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom; and that the facts set forth in this declaration are true and all statements made on information and belief are believed to be true.

Date: Nov 3, 2015

By: S. Hartmann  
Name: Elmar Hartmann  
Title: Managing Director















